

IN THE SUPREME COURT OF INDIA
ORIGINAL WRIT JURISDICTION
WRIT PETITION (CIVIL) No. 494 of 2012

IN THE MATTER OF:

Justice K.S. Puttaswamy (Retd.)

Petitioner/s

Vs.

Union of India & Ors.

Respondents



COUNTER AFFIDAVIT ON BEHALF OF
STATE OF RAJASTHAN

MOST RESPECTFULLY SHOWETH:

I, Dr. Hansraj Yadav, Additional Director (UID), Department of DoIT&C, Government of Rajasthan do hereby solemnly affirm as under:-

- 1) That I am the officer-in-charge appointed by the State of Rajasthan in the aforementioned case and as such I am well conversant with the facts and circumstances of the case on the basis of knowledge derived from the records of the case and hence I am competent to depose by way of present Counter Affidavit.
- 2) I say that I have read and understood the contents mentioned in the Writ Petition.
- 3) The State of Rajasthan is not taking this litigation as adversary but is keen to provide every resident of the State of Rajasthan a unique identification number so that the identification of the person for access and availing various public utility services is strengthened and smoothened.
- 4) It is humbly submitted that the State of Rajasthan is submitting the present preliminary reply whilst reserving its right to file a detailed counter-affidavit. This preliminary reply is filed due to paucity of time and as the matter is going to be listed on 10th December 2013. The detailed reply, if any, would be filed later on.
- 5) The State of Rajasthan is unambiguously in favour of implementation of Aadhaar Scheme. In fact, if the Aadhaar Scheme as conceived and

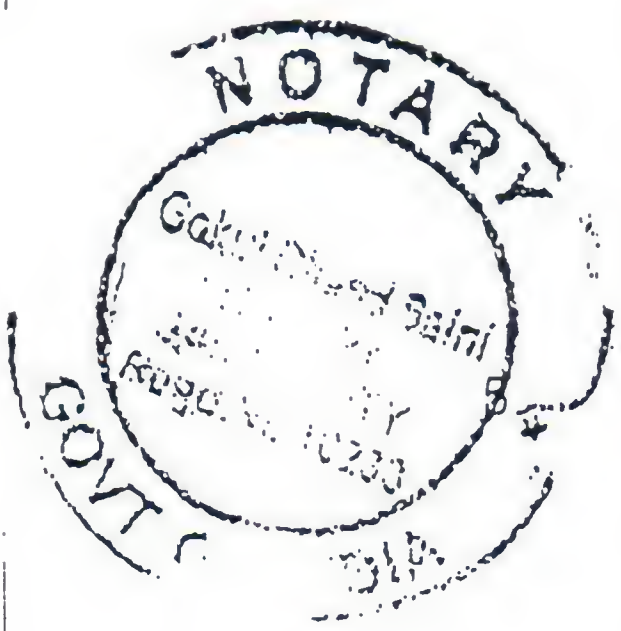
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contemplated is implemented throughout the country then every resident shall have a unique identification number (UID) and which shall have obvious positive impact. Therefore, one cannot find fault with overarching scheme which postulates a Unique Identification Number for every resident of this country.



The Aadhaar Scheme if executed *in toto* has certain distinct advantages which could be enumerated in a nutshell as follows:

- a. It fosters and facilitates the various welfare schemes/subsidies to the intended beneficiary.
- b. It provides easy identification of a person to avail slew of government services and access to health, education and other services and goods provided by the State.
- c. It plugs the leakages & pilferages which takes place in the delivery system of various government services and programmes and the intended beneficiary becomes a direct recipient of various programmes and schemes.

6) However, there has been some divergent views which have come with regard to implementation of Aadhaar scheme itself. Thus, the Aadhaar Scheme per se cannot be faulted upon but its execution has led to some glitches or lacunae. It is most respectfully submitted that the Court has very limited powers of judicial review to examine a policy decision. Thus, the Aadhaar Scheme cannot be faulted on the ground that it violates any fundamental right. In fact, the Right to Life includes Right to live with dignity and having minimum economic needs. Thus, the Aadhaar Scheme would only make fundamental rights more meaningful by easy access to various services/goods which are essential for a human being. Thus, the policy of Aadhaar Scheme per se does not breach any of the fundamental

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rights. It is equally a sedimented proposition of law that possibility of



misuse or even some aberrations whilst implementation or enforcement of a policy decision would not invalidate a scheme or policy decision. The present petition only raises alleged grounds to discredit Aadhaar scheme on the basis of certain aberrations. The grounds of invasion of Right to privacy and lack of executive power are dealt separately in paragraph (3). The lacunae/breaches which have emerged during the implementation of Aadhaar Scheme could easily be resolved at administrative level so as to ensure that the Aadhaar Scheme per se does not fail and the avowed objective behind the Aadhaar Scheme is achieved.

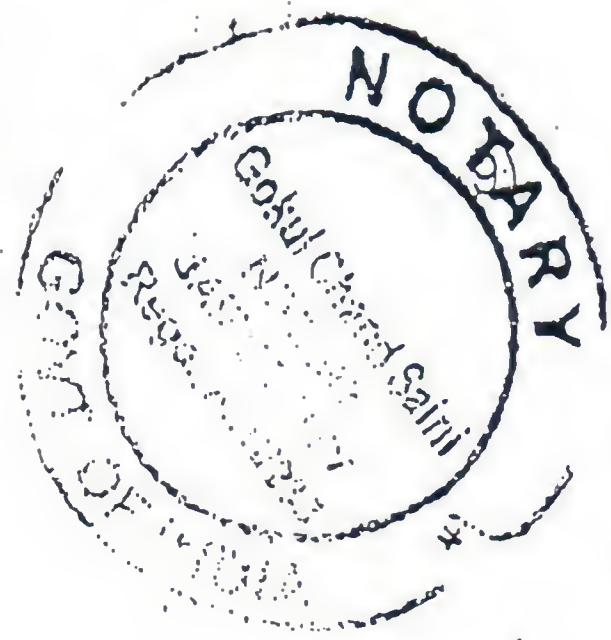
- 7) That, it is incumbent on the Government to discharge its duties and responsibilities in an orderly, effective and transparent manner. It is also a well-established prerogative of the Government to organize its work following sound management practices, periodically re-engineering processes and make use of technology to induce efficiency, convenience, transparency and accountability in the delivery of public services. The Aadhaar scheme and its application to public services is a well-considered decision of the Government of Rajasthan to ensure that the benefits go to intended individuals, leakages and wastes in the deployment of public funds are reduced and residents can avail services with ease and convenience. The application of Aadhaar to the various individual benefit schemes is clearly in the larger public interest. Overall, the objective is to cleanup delivery system and to ensure that nobody takes away the legitimate rights of the beneficiaries.

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- 8) That, it would not be out of place to mention here that since Aadhaar number corresponds to a unique record, therefore, tagged to a unique individual, merely introduction of Aadhaar in the beneficiary database ensures detection of a large number of duplicates. Similar use of Aadhaar in delivering services like pensions, scholarships, MGNREGA wages,

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subsidized food etc could stop-huge leakage and in turn the money saved could be utilized in providing additional benefits to the target beneficiaries.



That, the Government of Rajasthan views Aadhaar as a suitable platform for delivery of social benefits to the residents of Rajasthan. To enable a smooth roll out of this project due care is being taken to ensure convenient enrolment. Aadhaar based application and support structure is being developed to ensure proper utilization of potential of the project to enable targeted delivery of benefits. This also provides the State the opportunity to plug leakages that may have crept into the system.

10) That, the impact of the various individual benefit schemes would be substantially diluted if Aadhaar is not used as the identity proof. The highlighted points in paras 1 to 3 would be significantly compromised and the Government will be forced to continue bearing the burden of duplicate and fake beneficiaries.

11) That, it is reiterated that there will be no denial of benefits for absence of Aadhaar with a person. State of Rajasthan will ensure the enrolment of beneficiaries who do not have Aadhaar, state will also give adequate time to the beneficiaries for this purpose. It would be pertinent to mention here that no resident was denied any benefits under the schemes which were linked with Aadhaar. Diligent efforts were made by the concerned authorities to enrol beneficiaries of these schemes, their UID were got generated on priority and linking of their UID and bank account was also facilitated by the District Level Officers of the concerned schemes in their districts.

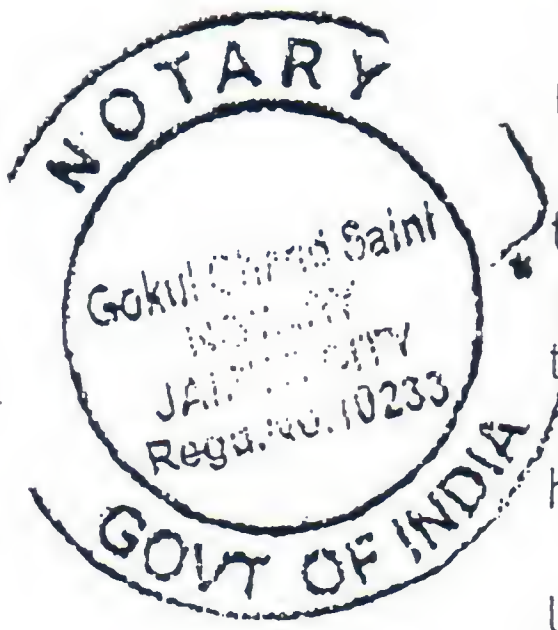
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12) That, it is pertinent to mention here that, Govt. of Rajasthan to reap benefits of UID, decided that UID/EID numbers be mandatorily obtained new applicants of 10 schemes including NREGA, Social Security

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Pensions (existing beneficiaries will continue to avail services without UID/EID), Ration Card, DL etc in only 14 Tehsils after all the villagers of those tehsils were covered by enrolment agencies. A translated copy of the Circular No. F5(661)/DoIT&C/Tech/5992 dated 17.10.2012 is annexed herewith and marked as Annexure A.^{P. 8 45-47} This compulsory collection of UID/EID number from new applicant was for the purpose of stopping duplicates in the database and not denial of services to the resident in lack of having UID number. Moreover, UID number shall not be made compulsory for these schemes in 14 tehsils or other tehsils till almost all the resident availing that scheme have obtained UID number.

13) That, the process of issuing Aadhaar to the people has been followed vigorously in the State of Rajasthan and it is pertinent to mention here that more than 60% population of State of Rajasthan has been covered till date and the remaining population is likely to be covered in next few months.

14) That, nearly 4000 machines had been deployed across the state and daily enrolment count was more than 1,00,000 with more than 4000 machines deployed by State & Non-State Registrar Enrolment Agencies upto August 2013. Permanent Enrolment Centres now have been set up in almost all the tehsils of the State to cover the process of issuing Aadhaar (UID) to facilitate Aadhaar enrolment to left outs. Presently more than 22,000 residents are being enrolled daily. The decrease in rate of enrolment is due to the uncertainty of status of Aadhaar following the Hon'ble Supreme Court order and the elections. Due to untiring efforts of District & Tehsils level administrative authorities and more than 20 Enrolment Agencies more than 4.10 crores population of the state has been enrolled in such a short time.

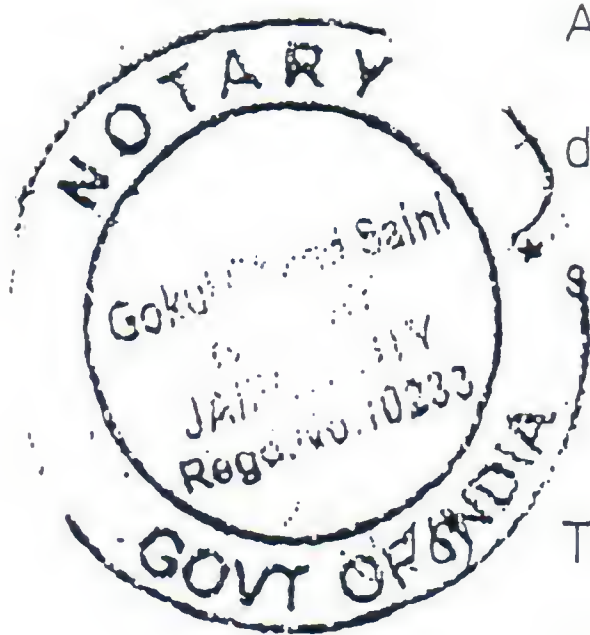
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15) That, enrolment coverage in some of the District(s)/Tehsils the UID enrolment coverage is more than 80% and state has started working on



Aadhaar enablement of various databases to eliminate the fake and duplicate beneficiaries for a effective service delivery which is key for a big state like Rajasthan with limited resources.

That the DoIT, Government of Rajasthan has been identified as the Nodal Department for implementation of the project in Rajasthan. The Principal Secretary DoIT is the Nodal officer for the project. Central Co-ordination of the entire project has been ensured by putting in place a UID Cell at Jaipur. For day to day monitoring and execution a senior official of the State Government has been posted exclusively as OSD UID. A team has been placed under the OSD to address issues of administrative co-ordinator and technical implementation.

- 17) That to ensure that all stakeholders, namely the district administrator, Enrolment Agencies, the Resident and Departments of the State Government, have easy access to relevant information regarding the project, a special portal has been created by the Government of Rajasthan that provides ready information regarding project and relevant to Rajasthan. Links have also been provided on this site, to the portals of the UIDAI. Hence all information is readily available to each stakeholder. Information available on the portal is also a very useful means of monitoring the project and planning future course of action.

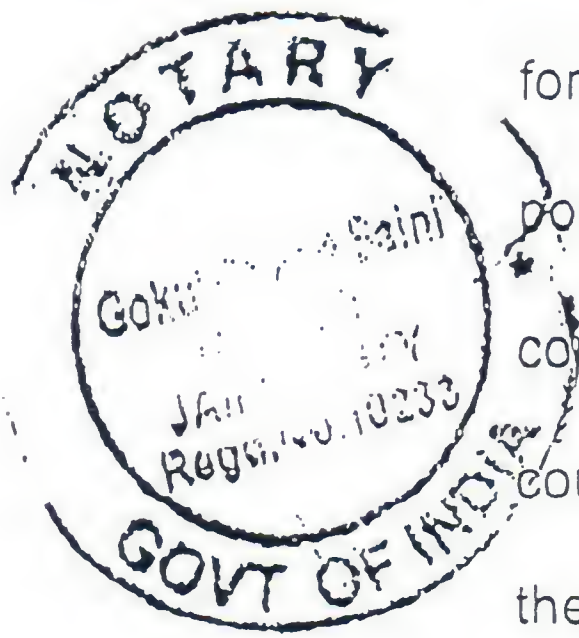
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That the project is resident centric in nature and aims to deliver benefits to the residents, a helpline has been created to address queries and complaints if any, regarding the project. A dedicated toll free number has been made available for all resident queries and Aadhaar related queries and are handled from this helpline.

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19) That communicating the Aadhaar number to the resident is key to take forward the project into the applications stage. In addition to the normal postal delivery of Aadhaar to residents, the State took the initiative of communicating the Aadhaar number to the resident, through SMS. This could be done for all Residents who had provided their mobile number at the time of enrolment. Over 30 Lakh SMS messages have been sent to Residents and this has been made an on-going feature of the implementation of the project.

20) That monitoring the quality of work done in the field is of vital importance. Data quality reports received from the UIDAI are very useful for monitoring the quality of work done at the level of each operator. In addition, a robust mechanism has been put in place for field inspections. Monitors have been deployed across the State for physical inspection of enrolment centres. Each centre is checked for adequacy against a standard set of parameters. All reports are compiled online to enable analysis and taking corrective action required. De-briefing of monitors is done periodically. As the monitors are retired government servants, the inspections done are of high quality.

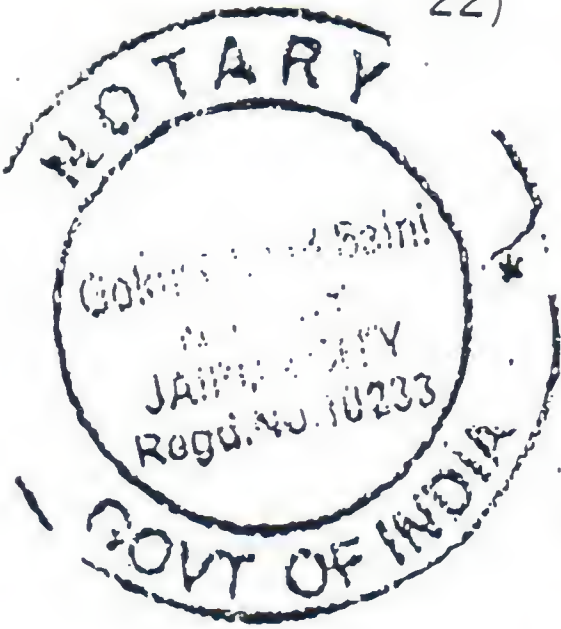
21) That to ensure adequate awareness regarding Aadhaar, appropriate messaging is being ensured throughout the state by using various medium – Newspapers, Hoardings, Wall Paintings, Radio and Local miking. Meetings are held at District and Panchayat level. The involvement of the district administration and block level officials in being ensured. As a special effort, an Aadhaar week was celebrated in the entire State of Rajasthan from 19.08.2013 to 23.08.2013. Special events were conducted simultaneously in all the 33 Districts of the State. It is proposed to hold the Aadhaar week every year, in the State of Rajasthan.

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22) That the State Resident Data Hub (SRDH) is a repository of the resident data. It is being used by Government of Rajasthan to support the electronic delivery of various social services. This will equip the State Government for using technologies to improve and/or enhance the efficiency and effectiveness of delivery of government to resident services on large scale. Creation of such a facility will prevent duplication of effort by various arms of the State Government.

23) That the Rajasthan Government is in the process of starting the electronic services like E-Know Your Customer (eKYC) for social services like Pension Schemes, Scholarship Schemes, etc. With the use of eKYC the State Government will be able to do better governance by means of quick, paperless, and accurate authentication of residents. Further existing available information about the resident can be collected at very low cost, without the need to repeat the exercise, in a secure manner and with the due consent of the resident.

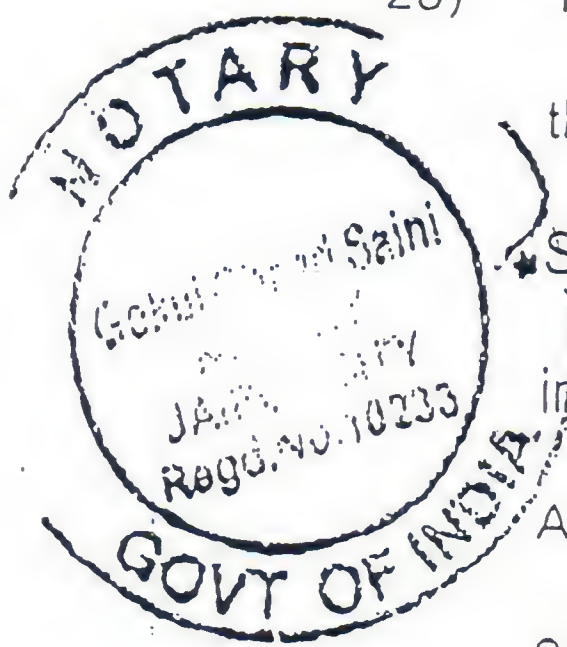
24) That the Direct Benefit Transfer (DBT) for social schemes has been launched in Rajasthan. There are three pilot districts of Rajasthan in each of Phase-I and Phase-II. There are 14 central DBT schemes across eight ministries in Rajasthan for direct benefit transfer. The Aadhaar based payments transactions have been done across the various central schemes in all the six pilot DBT districts of the Rajasthan. Seeing the potential Aadhaar based DBT in terms of accuracy, convenience, and speed, the State Government has also linked 4 state schemes with Aadhaar for transfer of benefits to the residents. Also the pilots for Aadhaar based delivery to residents by State Government for MGNREGA and PDS are in planning.

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25) That the Aadhaar Based Payment Mechanism has been integrated with the existing Centralized Integrated Financial Management System of the State Government. Technically the State Government is ready to implement the Aadhaar Based payments in all the districts. Migration to an Aadhaar based payment system encourages and requires end to end electronic systems ensuring audit ability and accountability. Where such systems are already in place, the integration can be seamlessly achieved with the existing system, while bringing the benefit of complete integration upto individual payment disbursal at field level.

26) That the Permanent Enrolment Centers (PEC) have been set up by the State Government as SINGLE WINDOW to provide the facilitation to the residents for the entire life cycle of Aadhaar i.e. from Enrolment till the Receipt of Aadhaar Letter. The PECs are being setup at Tehsil and District Headquarters to facilitate all Aadhaar based requirements and queries of residents. At present there are 446 PECs providing the below mention services:

- Enrolments of Left Out Residents & Fresh Enrolments for new born residents
- Update Centres both for biometric and demographic update.
- Finding the status of Aadhaar enrolments
- e-Aadhaar letter printing
- Tracking the Lost UID enrolments

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Re: Infringement of Right to Privacy

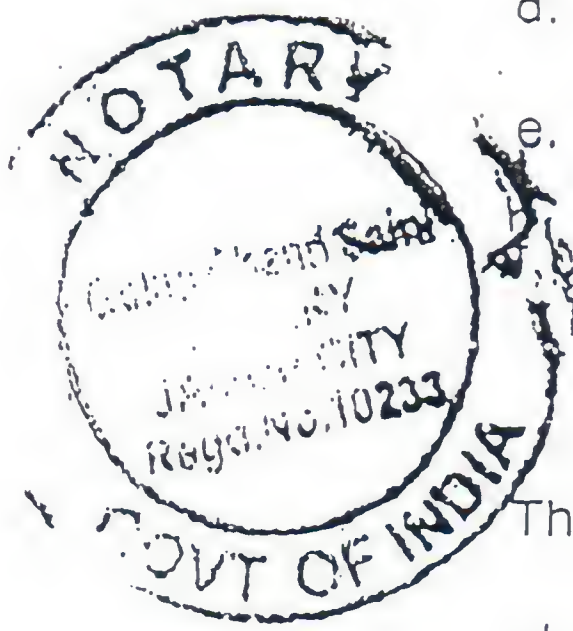
27) The Aadhaar Scheme as enunciated by the Union of India seeks following information from the concerned persons:

- a. Name
- b. Gender

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- d. Parentage
- e. Address
- Biometrics

The aforesaid information is the basic information which government can always seek from any person and providing such information would not lead to any invasion of any Right to Privacy. These information are always sought whenever a person is enrolled in school to a stage when the person takes passport. The biometric science would only identify the concerned person and it is only for identification of person. Thus, use of aforesaid information cannot be termed as invasion of Privacy and adequate care has been taken that the data collected during the preparation of Aadhar Card does not come in public domain.

Re: Lack of competence of Executive to implement Aadhaar Scheme in absence of legislation or when the legislation is being contemplated by the Parliament

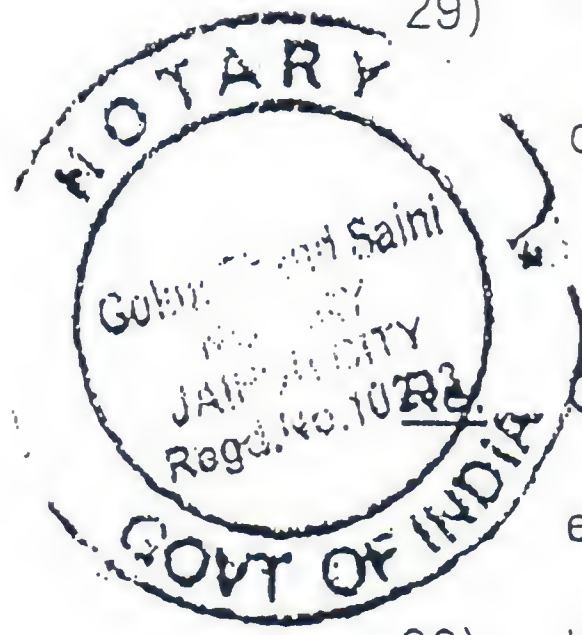
- 28) The Constitution Bench of the Hon'ble Supreme Court of India in Ram Jawaya Kapur Vs. State of Punjab [(1955) 2 SCR 225] has categorically stated that the Executive power of the Union of India/Centre is co-extensive with the legislative exercised by the Union of India. Thus, the Executive power of the Union of India extends to the issues/matters with which the Parliament has power to make laws. The executive power is only fettered by the fact that it should not be inconsistent with any law made by the Parliament or which contravenes the fundamental rights of the resident. In the present matter, the Union of India had the legislative competence to enact law and therefore shall *proprio vigore* have requisite executive power.

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29) Thus, absence of a law or even contemplation of law by the parliament cannot be made a ground to declare the Aadhaar policy as *ultra vires*.

Grant of Aadhaar Cards to illegal migrants/persons who are not entitled to Aadhaar Card.

30) It is respectfully submitted that the possibility of misuse of the policy or certain aberrations cannot invalidate or vitiate any policy decision. A method could be devised by which due diligence takes place so that the Aadhaar Card are not distributed to the persons who are not otherwise entitled to such cards. The foolproof mechanism can be evolved over a period of time but it should not become a ground to invalidate the entire policy. The Union of India could devise such mechanism and it can become part of due diligence.

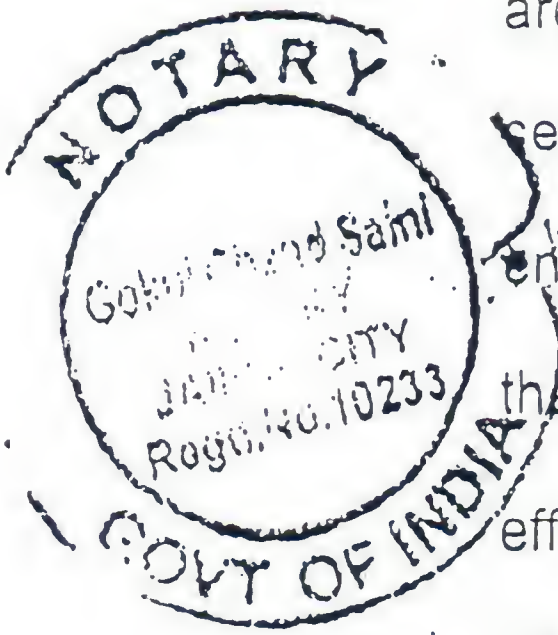
31) Similarly, it has been alleged that the Aadhaar Cards are distributed by the private companies and therefore are reckless in grant of Aadhaar cards. It would be relevant to mention that only the technical functions are given as assistance by the private company to the Government apparatus and it is the State Government/Central Government which disburses the Aadhaar Cards in pursuance to broad guidelines issued by the Union of India.

Re: Denial of subsidies to the persons who are not having UID cards

32) It is most respectfully submitted that the entire objective of the schemes is to provide every person a unique identification number for providing various public services and easy access to various government welfare schemes. There is no intention to deny any resident of any public good or public utility services. The Government of Rajasthan had issued a circular dated 17.10.2012. This circular was issued to ensure that people get enrolled. For example, there is no reason as to why government servants not get themselves in the Aadhaar schemes, especially when there

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are various drives to enroll the persons in Aadhaar schemes. The denial of services was confined to 14 tehsils which were about to achieve 100% enrolment. Once the entire area is 100% covered for Aadhaar enrolment, then asking for Aadhaar card becomes imperative so as to provide efficient and effective public services. In the present case, the Circular of 17.10.2012 was confined to 14 tehsils which had achieved or were about to achieve 100% Aadhaar enrolment. Therefore, it would be wrong to suggest that Aadhaar scheme had become a ground to deny the availment of public services. In fact, it is other way round.

- 33) It is also relevant to mention that the circular dated 17.10.2012 has not led to denial of any services to any legitimate person for lack of Aadhaar scheme. The circular was issued to ensure 100% enrolment of Aadhaar scheme in a particular area and for all government servants. The mandate requirement of availing any public utility / public services would be implemented once all the government-servants are enrolled in the scheme / beneficiary of the particular area are 100% enrolled in the Aadhaar scheme. It is therefore most respectfully submitted that bogey of non-access to public services for lack of Aadhaar Card has been raised to discredit the otherwise laudable scheme.

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(Signature)
(Dr. Hansraj Yadav)
DEPONENT

VERIFICATION:

(Signature)
Verified at Jaipur on 5th day of December 2013 that the contents of the above affidavit are true and correct to the best of my knowledge and belief, and no part of it is false and nothing material has been concealed therefrom.

Identified by
(Signature)

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(Signature)
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JAIPUR (INDIA)

(Signature)
(Dr. Hansraj Yadav)
DEPONENT

GOVERNMENT OF RAJASTHAN

Department of Information Technology & Communication

No.: F5(661)/DoIT/Tech/12/5992

Dated: 17/10/2012

CIRCULAR

The second phase of enrolment of UID ("aadhaar") has started in the State. Approximately 91 lakh UID enrolments have been completed in the State. Department of Information Technology & Communication, State Registrar ("aadhaar"), alongwith Postal Department, NSDL and some banks are carrying out the work of "aadhaar" enrolment as non-state enrollers. By March 2013, about 2.5 crore residents of the State will be enrolled for "aadhaar" and in the next 17 months, the work of "aadhaar" enrolment all residents in the State will be completed.

Enrolment is being carried out by "sweep mode", whereby the enrolment agency enrolls the entire population of a Gram Panchayat/Tehsil, only after which it begins enrolment in another area. "Aadhaar" enrolment centres will be established at all Tehsil headquarters during the scheme period.

To ensure the reach of the benefits of "aadhaar" to common people, it is necessary that aadhaar number/aadhaar enrolment be obtained from the beneficiaries and recipients of various schemes. Therefore, it has been decided that while availing the following schemes/services, aadhaar enrolments/aadhaar number will be mandatory, for which detailed instructions will be issued by the concerned department.

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1. Old Age, Widow and Disability Pension (present beneficiaries will be entitled to these services without Aadhaar number/Aadhaar enrolment)

2. NREGA job card

3. Ration card

4. Driving licence

5. Electricity/water connection

6. Property registration

7. Obtaining copy of land records, and changing name therein

8. Indira Awas Yojna and individual beneficial schemes of the Rural Development and Panchayati Raj

9. Scholarships

10. Arms licence

For targeted distribution of services and removal of bogus beneficiaries, all departments are also directed to link existing services/schemes with "aadhaar". Upon the linkage of the above services/schemes with "aadhaar", the "aadhaar" numbers of the remaining beneficiaries may also be collected together.

The work of aadhaar enrolment in 14 tehsils mentioned in Annexure-'A' had already begun in the past and by the month of January, 2013, the work of aadhaar enrolment will be completed in those tehsils and all Gram Panchayats. From February 1, 2013, it will be mandatory for all residents in these tehsils to have aadhaar number/aadhaar enrolment number for availing the abovementioned 10 services/schemes. Regarding the other tehsils, the time-limit for making aadhaar number/aadhaar enrolment mandatory will be specified by the Department of Information Technology separately.

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It has also been decided that w.e.f. February 1, 2013, aadhaar number/aadhaar enrolment will be mandatory for Government employees (including public sector undertakings, boards, institutions, autonomous bodies) to draw salaries. Therefore, all government employees are hereby directed that they obtain aadhaar number/aadhaar enrolment before February 1, 2013. For this purpose, aadhaar enrolment centres will be set up at District and Tehsil headquarters.

Under the directions of the Governor
Sd/- (C.K. Mathew)
Chief Secretary

No.: F5(661)/DoIT/Tech/12/5992

Dated:

Copy is forwarded to the following for information and necessary action:-

1. Private Secretary, His Excellency the Governor of Rajasthan, Jaipur.
2. Private Secretary, Hon'ble Chief Minister, Government of Rajasthan, Jaipur.
3. Private Secretary, Chief Secretary, Government of Rajasthan, Jaipur.
4. All other Principal Secretaries, Secretaries and Commissioners, Rajasthan, Jaipur.
5. All Principal Secretaries to Government/Secretaries to Government, Rajasthan, Jaipur.
6. All Heads of Departments/Chief Executive Officers, Rajasthan, with the direction that they ensure compliance of the above directions.

Sd/- (Sanjay Malhotra)
Principal Secretary and Commissioner

True-copy